

Remarks:

Reconsideration of the application is requested.

Claims 3 to 60, 62 to 64, 67 to 91, and 93 to 95 remain in the application. Claims 3, 5, 7, 8, 9, 11, 12, 17, 18, 21, 22, 26, 29, 31, 34, 38, 39, 40, 41, 42, 44, 45, 64, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 79, 87, 88, and 95 have been amended. A marked-up version of the claims is attached hereto on separate pages. Claims 1, 2, 61, 65, 66, and 92 have been canceled to facilitate prosecution of the instant application.

On the top of page 2 of the above-identified Office action, claims 65 through 95 have been rejected as being indefinite under 35 U.S.C. § 112, second paragraph. More specifically, the Examiner states that regarding claims 65 and 90 through 95, "it is unclear to the examiner how the first and second fixed supporting structures are connected to each other. For example only, how is the solid floor of the first fixed supporting structure connected to the solid floor of the second fixed supporting structure"?

While claims 65 and 90 through 95 may be broad, applicant respectfully believes that these claims are clear and definite to one having ordinary skill in the art. Specifically, one having ordinary skill in the art knows how a first fixed supporting structure having a floor, a ceiling, a back wall,

and an open arch can be "removably connected" to a second fixed supporting structure having a floor, a ceiling, a back wall, and an open arch.

Here, applicant respectfully believes that the Examiner is improperly confusing a broad claim with a claim that is indefinite. See Cedarapids, Inc. v. Nordberg, Inc., 1997 U.S. App. LEXIS 21157 at 12 to 13 (Fed. Cir. 1997) (see 121 F.3d 727); In re Miller, 441 F.2d 689, 693, 169 U.S.P.Q. 597, 600 (CCPA 1971). By using the phrase "removably connected," claims 65 and 90 through 95 are broad. However, these claims are not indefinite. Appellant can be his own lexicographer. Removably connected is described in various embodiments in the application and would be understandable by the description in the specification or by the wording of the claim, itself.

It is accordingly believed that the specification and the claims meet the requirements of 35 U.S.C. § 112, second paragraph.

On pages 2 to 3 of the above-identified Office action, claims 1, 8, 17, 38 to 40, 42, and 44 have been rejected as being fully anticipated by Leake (U.S. 1,955,194) under 35 U.S.C. § 102.

Insofar as claim 1 has been canceled. It is respectfully believed that the rejection of claim 1 and the claims dependent therefrom is now moot. Nonetheless, applicant respectfully believes that Leake does not anticipate or suggest original claim 59, which is now the claim upon which claims 3 through 58 depend.

Before discussing the prior art in detail, it is believed that a brief review of the invention as claimed, would be helpful. Claim 59 calls for, *inter alia*, a modular house toy, including:

a solid floor;

a solid ceiling;

a solid back wall permanently connecting the floor to the ceiling; and

an open arch permanently connecting the floor to the ceiling.

As defined in the specification of the instant application at page 9, lines 1 to 10:

"solid," with respect to the solid ceiling 3, is to be understood as meaning that objects do not pass through the plane defined by the edges of the solid ceiling 3, whether from above the solid ceiling 3 to below the solid ceiling 3, or from below the solid ceiling 3 to above the solid ceiling 3 without breaking the solid ceiling 3 itself. In other words, all access by the user to the inside space 6 of an assembled modular house toy through the plane defined by the edges of the solid ceiling 3 is impeded.

Nowhere does Leake disclose or suggest such a ceiling. In fact, the principle upon which Leake is based teaches exactly the *opposite*.

Specifically, Leake discloses a building set made up of an infrastructure composed of vertical corner posts 1 and horizontal girders 2. The posts 1 and girders 2 are of sheet metal (see Leake at page 1, lines 52 to 53) and are secured to one another with screw bolts 3. Id. at lines 56 to 58. Exterior strips 7 are secured to lower ends of the posts 10 to represent a brick foundation of the building. Id. at lines 71 to 74. Ends 8 of the building are made from solid walls (also of sheet metal) extending from the strips 7 at the bottom of the building all the way up to the roof of the building. Similarly, front and rear sides 9 of the building are solid

sheet metal walls extending from the strips 7 all the way up to the roof. The roof is composed of front and back solid sheet metal roof pieces 13, which are respectively secured to upper faces of gabled roof strips 12. Id. at lines 79 to 87. Each roof piece 13 has a hinge secured at an ear 14 so that the entire ceiling-front/rear side 9 can be hingedly lifted away from the upper portion of the building so that access from above is provided to a user.

In the rejection of claim 1, the Examiner states that the roof 17 of the Leake building set is the "solid ceiling" set forth in claim 1 (now claim 59). Such a comparison cannot be accepted, primarily because the roof 17 is, actually, simply an awning that is secured onto a front entrance or porch 16 of the Leake building set. See Leake at page 1, lines 94 to 96, and FIG. 4. Such an awning is not the "ceiling" of the Leake building set. Rather, the ceiling, as set forth above, is made up of roof pieces 13, which are secured to gabled roof strips 12. One of the roof pieces 13 is movably connected to another of the roof pieces 13 by a hinge disposed at an ear 14, as shown in FIG. 1 of Leake indicated by a cut-away lifted portion at the upper part of the figure. As clearly described on page 1, lines 79 through 87:

The roof pieces 13 are secured to the upper faces of the strips 12, and the latter are provided at their upper

ends with ears 14 to form hinges, so that the front or rear side of the building, together with the adjacent side of the roof may be raised as shown in the upper part of Fig. 1 to provide free access to the interior of the building for the purpose of arranging the fixtures or furniture therein.

Thus, Leake is based upon the fundamental principle that the user is supposed to access the interior of the Leake building set through the ceiling.

To reiterate the ceiling features of claim 59, " 'solid,' with respect to the solid ceiling 3, is to be understood as meaning that objects *do not pass through the plane defined by the edges of the solid ceiling 3*. . . . In other words, *all access by the user to the inside space 6 of an assembled modular house toy through the plane defined by the edges of the solid ceiling 3 is impeded*." Emphasis added by applicant. The principle upon which Leake is based, however, is access through the ceiling. Thus, Leake cannot be said to disclose the ceiling of the invention of the instant application.

Claim 59 also provides an "open arch permanently connecting [the] floor to [the] ceiling." The Examiner states that the open arch of the invention of the instant application is anticipated by the front entrance/porch 16 of Leake.

Applicant respectfully believes that the front entrance/porch 16 of Leake is not analogous to the open arch 5 structure of the invention of the instant application. Specifically, the front entrance/porch 16 is in no way associated with connecting Leake's floor (which is composed of the posts 1 and girders 2 disposed inside the walls making up the four sides of the Leake building (i.e., ends 8 and sides 9)) to the roof structure (which is composed of the gabled roof strips 12 and roof pieces 13), let alone *permanently* connecting the floor to the roof structure. In fact, the front entrance/porch 16 appears to have no structural qualities whatsoever because it is an add-on or accessory to the supporting structure itself, and is, therefore, merely an ornamental feature to be attached to the front side 9. As such, Leake does not disclose or suggest any kind of arch connecting the floor to the ceiling.

Clearly, Leake does not show a modular house toy as recited in claim 59 of the instant application.

On pages 3 to 4 of the above-identified Office action, claims 1 to 6, 9, 10, 11, 12, 16, 17, 20 to 22, 26, 27, 29, 36, 38, 40 to 42, 59, 60 to 68, 75, 76, 79, 80, 84, and 90 to 95 have been rejected as being fully anticipated by Gonzalez (U.S. 5,121,710) under 35 U.S.C. § 102.

Insofar as claims 1, 2, 61, 65, 66, and 92 have been canceled, it is respectfully believed that the rejection of these claims is now moot.

Claims 3 through 58 are now dependent upon original claim 59 and claims 67 through 89 are now dependent upon original claim 90. Further, claims 64 and 95 have been amended to include the permanent connection feature in the other independent claims.

In the rejection under Gonzalez, the Examiner lists separate reasons for each and many of the forty-four rejected claims on pages 3 through 5 of the Office action. However, a careful review of the entire wording of the rejection in pages 3, 4, and 5 reveals that there is no mention whatsoever of the "permanent" connecting features of the invention of the instant application (a connection that was originally present in most of the original fourteen (14) independent claims and is now present in *all* of the independent claims). Specifically, each of the independent claims 59, 60, 62, 63, 64, 90, 91, 93, 94, and 95 call for, *inter alia*, a modular house toy or modular house toy configuration, including:

a solid floor;

a solid ceiling;

a solid back wall permanently connecting the floor to the ceiling; and

an open arch permanently connecting the floor to the ceiling.

In contrast to the invention of the instant application, Gonzalez is a "collapsible" doghouse. See Gonzalez at the Title, at the Abstract, in all of the drawings (especially FIGS. 6 and 11), in at least seven instances in the Background, in ten of the eleven (11) descriptions of the drawings, in at least seven instances in the Detailed Description, and in every one of the eight (8) claims. In fact, Gonzalez specifically provides at col. 1, lines 48 to 52, that collapsibility -- meaning the ability for the doghouse to be taken entirely apart at the desire of the user -- is an "essential function" of the Gonzalez invention.

Gonzalez also specifically distinguishes its collapsible teachings from permanent attachments at col. 1, lines 15 to 19. Accordingly, Gonzalez expressly teaches away from any kind of permanent connection features and especially teaches away from a structure that is permanently connected as set forth in every one of the independent claims of the instant application.

As such, Gonzalez can neither show nor suggest the features of claims 59, 60, 62, 63, 64, 90, 91, 93, 94, or 95 of the instant application. These claims are, therefore, believed to be patentable over the art.

Insofar as all of these claims are allowable, and due to the fact that all of the dependent claims ultimately depend upon one of claims 59, 60, 62, 63, 64, 90, 91, 93, 94, and 95, the dependent claims are believed to be patentable as well.

Finally, applicant appreciatively acknowledges the Examiner's statement that claims 7, 13 to 15, 23 to 25, 28, 30 to 35, 37, 3, and 45 to 58 "would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims." In light of the above, applicant respectfully believes that rewriting of these claims is unnecessary at this time.

In view of the foregoing, reconsideration and allowance of claims 3 to 60, 62 to 64, 67 to 91, and 93 to 95 are solicited.

In the event the Examiner should still find any of the claims to be unpatentable, counsel would appreciate receiving a

telephone call so that, if possible, patentable language can be worked out.

Please charge any other fees that might be due with respect to Sections 1.16 and 1.17 to the Deposit Account of Lerner and Greenberg, P.A., No. 12-1099.

Respectfully submitted,



For Applicant

GLM:cgm

Gregory L. Mayback
Reg. No. 40,719

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Lerner and Greenberg, P.A.
Post Office Box 2480
Hollywood, FL 33022-2480
Tel: (954) 925-1100
Fax: (954) 925-1101

Version of Claims With Markings to Show Changes Made:

Claim 3 (amended). The toy according to claim [1]59, wherein:

said back wall connects said floor to said ceiling in a first vertical connection plane; and

said arch connects said floor to said ceiling in a second vertical connection plane different from said first vertical connection plane.

Claim 5 (amended). The toy according to claim [1]59, wherein:

said floor has floor depressions;

said ceiling has ceiling depressions;

said back wall has wall extensions;

at least one of said wall extensions is inserted into at least one of said floor depressions and at least one of said wall extensions is inserted into at least one of said ceiling depressions to permanently connect said floor to said ceiling;

said arch has arch extensions; and

at least one of said arch extensions is inserted into at least one of said floor depressions and at least one of said arch extensions is inserted into at least one of said ceiling depressions to permanently connect said floor to said ceiling.

Claim 7 (amended). The toy according to claim [1]59, wherein

said floor has a top side with two pairs of floor depressions;

said ceiling has a bottom side with two pairs of ceiling depressions;

said back wall has:

two lower wall extensions inserted into a first of said two pairs of floor depressions; and

two upper wall extensions inserted into a first of said two pairs of ceiling depressions to permanently connect said floor to said ceiling in a first vertical connection plane; and

said arch has:

two lower arch extensions inserted into a second of said two pairs of floor depressions; and

two upper arch extensions inserted into a second of said two pairs of ceiling depressions to permanently connect said floor to said ceiling in a second vertical connection plane different from said first vertical connection plane.

Claim 8 (amended). The toy according to claim [1]59, wherein said floor is a one-piece, injection molded part.

Claim 9 (amended). The toy according to claim [1]59, wherein said floor has a square shape.

Claim 11 (amended). The toy according to claim [1]59, wherein:

said floor has:

a top side; and

four side walls formed in one piece with said top side.

Claim 12 (amended). The toy according to claim [1]59, wherein:

said floor has four side walls; and

each of said four side walls has a cavity and a projection.

Claim 17 (amended). The toy according to claim [1]59, wherein said ceiling is a one-piece, injection molded part.

Claim 18 (amended). The toy according to claim [1]59, wherein said ceiling has a square shape.

Claim 21 (amended). The toy according to claim [1]59, wherein:

said ceiling has:

a top side; and

four side walls formed in one piece with said top side.

Claim 22 (amended). The toy according to claim [1]59, wherein:

said ceiling has four side walls; and

each of said four side walls [32] has a cavity and a projection.

Claim 26 (amended). The toy according to claim [1]59,
wherein:

said floor has floor depressions;

said ceiling has ceiling depressions identical in shape to
said floor depressions.

Claim 29 (amended). The toy according to claim [1]59,
wherein:

said ceiling has:

a top side; and

four side walls; and

said four side walls and said top side form a one-piece open
box.

Claim 31 (amended). The toy according to claim [1]59,
wherein:

said ceiling has a top side defining a plane; and

said top side has at least one flange projecting transverse to said plane.

Claim 34 (amended). The toy according to claim [1]59, wherein:

said ceiling has a top side; and

a roof is removably connected to said top side.

Claim 38 (amended). The toy according to claim [1]59, wherein said back wall is a one-piece, injection molded part.

Claim 39 (amended). The toy according to claim [1]59, wherein said back wall has a solid window.

Claim 40 (amended). The toy according to claim [1]59, wherein said back wall has a shuttered window.

Claim 41 (amended). The toy according to claim [1]59, wherein said arch has:

two side walls; and

an upside-down-U-shaped front wall.

Claim 42 (amended). The toy according to claim [1]59, wherein said arch is a one-piece, injection molded part.

Claim 44 (amended). The toy according to claim [1]59, wherein said arch has a post with a bore for receiving a screw.

Claim 45 (amended). The toy according to claim [1]59, wherein:

said floor, said ceiling, and at least one of said back wall and said arch define a side opening; and

a side wall is removably connected at said side opening.

Claim 64 (amended). A modular house toy, comprising:

a solid floor having floor depressions;

a solid ceiling having ceiling depressions;

a solid back wall having wall extensions, at least one of said wall extensions inserted into at least one of said floor depressions and at least one of said wall extensions inserted into at least one of said ceiling depressions to permanently connect said floor to said ceiling;

an open arch having arch extensions, at least one of said arch extensions inserted into at least one of said floor depressions and at least one of said arch extensions inserted into at least one of said ceiling depressions to permanently connect said floor to said ceiling; and

said floor having a first given shape, said ceiling having said first given shape, said back wall having a second given shape, and said arch having said second given shape, to allow repetitious and modular interlocking of the modular house toy to another module house toy.

Claim 67 (amended). The toy configuration according to claim [65]90, wherein:

said back wall connects said floor to said ceiling in a first vertical connection plane; and

said arch connects said floor to said ceiling in a second vertical connection plane different from said first vertical connection plane.

Claim 68 (amended). The toy configuration according to claim [65]90, wherein:

said back wall has wall extensions;

at least one of said wall extensions is inserted into at least one of said floor depressions and at least one of said wall extensions inserted into at least one of said ceiling depressions to permanently connect said floor to said ceiling;

said arch has arch extensions; and

at least one of said arch extensions is inserted into at least one of said floor depressions and at least one of said arch extensions is inserted into at least one of said ceiling depressions to permanently connect said floor to said ceiling.

Claim 69 (amended). The toy configuration according to claim [65]90, wherein:

said floor has a top side with two pairs of floor depressions;

said ceiling has a bottom side with two pairs of ceiling depressions;

said back wall has:

two lower wall extensions inserted into a first of said two pairs of floor depressions; and

two upper wall extensions inserted into a first of said two pairs of ceiling depressions to permanently connect said solid floor to said solid ceiling in a first vertical connection plane; and

said arch has:

two lower arch extensions inserted into a second of said two pairs of floor depressions; and

two upper arch extensions inserted into a second of said two pairs of ceiling depressions to permanently connect said floor to said ceiling in a second vertical connection plane different from said first vertical connection plane.

Claim 70 (amended). The toy configuration according to claim [65]90, wherein:

said floor of said first fixed supporting structure has a first floor shape;

said floor of said second fixed supporting structure has a second floor shape substantially identical to said first floor shape;

said ceiling of said first fixed supporting structure has a first ceiling shape;

said ceiling of said second fixed supporting structure has second ceiling shape substantially identical to said first ceiling shape;

said back wall of said first fixed supporting structure has a first back wall shape;

said back wall of said second fixed supporting structure has a second back wall shape substantially identical to said first back wall shape;

said arch of said first fixed supporting structure has a first arch shape; and

said arch of said second fixed supporting structure has a second arch shape substantially identical to said first arch shape.

Claim 71 (amended). The toy configuration according to claim [65]90, wherein:

said floor of said first fixed supporting structure has an exterior shape;

said floor of said second fixed supporting structure has a second exterior shape substantially identical to said exterior shape;

said ceiling of said first fixed supporting structure has a third exterior shape substantially identical to said exterior shape; and

said ceiling of said second fixed supporting structure has fourth exterior shape substantially identical to said exterior shape.

Claim 72 (amended). The toy configuration according to claim [65]90, wherein:

said back wall of said first fixed supporting structure has an exterior shape;

said back wall of said second fixed supporting structure has a second exterior shape substantially identical to said exterior shape;

said arch of said first fixed supporting structure has a third exterior shape substantially identical to said exterior shape; and

said arch of said second fixed supporting structure has fourth exterior shape substantially identical to said exterior shape.

Claim 73 (amended). The toy configuration according to claim [65]90, wherein:

said ceiling of said first fixed supporting structure has four first side walls each with a first cavity and a first projection;

said ceiling of said second fixed supporting structure has four second side walls each with a second cavity and a second projection; and

said first projection is removably inserted into said second cavity and said second projection is removably inserted into said first cavity when said ceiling of said first fixed supporting structure is placed adjacent said ceiling of said second fixed supporting structure.

Claim 74 (amended). The toy configuration according to claim [65]90, wherein:

said floor of said first fixed supporting structure has four first floor side walls each with a first floor cavity and a first floor projection;

said ceiling of said first fixed supporting structure has four first ceiling side walls each with a first ceiling cavity and a first ceiling projection;

said floor of said second fixed supporting structure has four second floor side walls each with a second floor cavity and a second floor projection;

said ceiling of said second fixed supporting structure has four second ceiling side walls each with a second ceiling cavity and a second ceiling projection; and

when said floor of said first fixed supporting structure is placed immediately adjacent said floor of said second fixed supporting structure and said ceiling of said first fixed supporting structure is simultaneously placed immediately adjacent said ceiling of said second fixed supporting structure:

said first floor projection, said second floor projection, said first ceiling projection, and said second ceiling projection are simultaneously removably

inserted into a respective one of said second floor cavity, said first floor cavity, said second ceiling cavity, and said first ceiling cavity.

Claim 75 (amended). The toy configuration according to claim [65]90, wherein:

said at least first and second fixed supporting structures are a plurality of fixed supporting structures; and

each of said plurality of fixed supporting structures is removably connected to another of said plurality of fixed supporting structures.

Claim 76 (amended). The toy configuration according to claim [65]90, wherein:

said first fixed supporting structure is a cube having a given length, a given width, and a given height; and

said second fixed supporting structure is a cube having said given length, said given width, and said given height.

Claim 79 (amended). The toy configuration according to claim [65]90, wherein said ceiling has a top side with a connector

for releasably connecting another of said fixed supporting structures on said top side.

Claim 87 (amended). The toy configuration according to claim [65]90, wherein:

said ceiling has a top side; and

a roof is removably connected to said top side.

Claim 88 (amended). The toy configuration according to claim [65]90, wherein:

said ceiling has a top side with a connector;

a roof is removably connected to said top side by said connector.

Claim 95 (amended). A modular house toy configuration, comprising:

at least first and second fixed supporting structures each having:

a solid floor having floor depressions;

a solid ceiling having ceiling depressions;

a solid back wall having wall extensions, at least one of said wall extensions inserted into at least one of said floor depressions and at least one of said wall extensions inserted into at least one of said ceiling depressions to permanently connect said floor to said ceiling;

an open arch having arch extensions, at least one of said arch extensions inserted into at least one of said floor depressions and at least one of said arch extensions inserted into at least one of said ceiling depressions to permanently connect said floor to said ceiling;

said floor having a first given shape, said ceiling having said first given shape, said back wall having a second given shape, and said arch having said second given shape, to allow repetitious and modular interlocking of said first fixed supporting structure to said second fixed supporting structure; and

said first fixed supporting structure removably connected to said second fixed supporting structure.